

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT MARTINSBURG**

**MICHAEL ERIC HORNES,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 1:04CV261  
(BROADWATER)**

**KEVIN WENDT, dba Warden,  
M. ARNOLD, dba Captain, et al.,**

**Defendants.**

**ORDER ADOPTING REPORT AND RECOMMENDATION AND SETTING TIME FOR  
PLAINTIFF TO PAY FILING FEE**

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated May 5, 2005. Magistrate Judge Kaull's Report and Recommendation advised that plaintiff's request to proceed without prepayment of fees should be denied and that plaintiff should be ordered to pay the full filing fee. On May 11, 2005 the plaintiff filed timely objections to the Report.

The Court notes that the increase in filing fee from \$150.00 to \$250.00 per 28 United States Code § 1914(a) did not take effect until February 7, 2005 and therefore, as plaintiff's action was filed on December 22, 2004, he is only required to pay a filing fee in the amount of \$150.00. However, the Court agrees with the Magistrate Judge's Report that at the time the action was filed, plaintiff had sufficient funds to pay the \$150.00 fee.

Therefore, it is hereby **ORDERED**

1) the Magistrate Judge's Report and Recommendation (**Docket No. 12**) be and is hereby **ADOPTED**;

2) the Plaintiff's Application for Leave to Proceed Without Prepayment of Fees (**Docket No. 8**) is **DENIED**;

3) if Plaintiff has not paid the **full \$150.00 filing fee by June 20, 2005**, this matter shall be dismissed from the Court's active docket without prejudice.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the plaintiff and all counsel of record herein.

**DATED** this **16<sup>th</sup>** day of May 2005.

  
**W. CRAIG BROADWATER**  
**UNITED STATES DISTRICT JUDGE**